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Attorney for HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR CITIGROUP
MORTGAGE LOAN TRUST, INC. ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005-HE2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

IN RE:	§	CASE NO. 17-90014-BP-13
	§	
CARLOS ESCOBEDO and SYLVIA	§	
ESCOBEDO,	§	
Debtor	§	CHAPTER 13
	§	
HSBC BANK USA, NATIONAL	§	
ASSOCIATION AS TRUSTEE FOR	§	
CITIGROUP MORTGAGE LOAN	§	
TRUST, INC. ASSET BACKED	§	
PASS-THROUGH CERTIFICATES	§	
SERIES 2005-HE2,	§	
Movant	§	HEARING DATE: _____
	§	
v.	§	TIME: _____
	§	
CARLOS ESCOBEDO and SYLVIA	§	
ESCOBEDO; CAREY D EBERT,	§	
Trustee	§	
Respondents	§	JUDGE BILL PARKER

**MOTION OF HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR
CITIGROUP MORTGAGE LOAN TRUST, INC. ASSET BACKED PASS-THROUGH
CERTIFICATES SERIES 2005-HE2
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO
§ 362(e)**

NOTICE

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN
OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES
BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS
PLEADING WITHIN 14 DAYS FROM THE DATE OF SERVICE UNLESS THE**

COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR CITIGROUP MORTGAGE LOAN TRUST, INC. ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005-HE2, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about January 10, 2017, Debtors (hereinafter "Debtor") filed a petition for an order of relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C.
3. At the time of filing the Chapter 13 petition, Movant held a Note executed on January 16, 2002, by CARLOS ESCOBEDO and SYLVIA ESCOBEDO in the original amount of FIFTY-SIX THOUSAND TWENTY DOLLARS AND ZERO CENTS (\$56,020.00) with interest thereon at the rate of 8.000% per annum. A true and correct copy of the Note is attached hereto as Exhibit "A".
4. Debtor(s) executed a promissory note secured by a mortgage or deed of trust. The promissory note is either made payable to Creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage or deed of trust.
5. The indebtedness is secured by a Deed of Trust dated January 16, 2002 and

executed by CARLOS ESCOBEDO and SYLVIA ESCOBEDO on real estate with all improvements known as:

BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND SITUATED IN ANGELINA COUNTY, TEXAS, OUT OF THE P. HERRERA SURVEY, ABSTRACT NO. 802 AND BEING ALL OF THAT CERTAIN 3.23 ACRE TRACT DESCRIBED IN A DEED FROM AUDRA M. EUBANK TO TRUITT J. EUBANK DATED JULY 2, 1996 AND RECORDED IN VOLUME 1071 ON PAGE 733 THE OF REAL PROPERTY RECORDS OF ANGELINA COUNTY, TEXAS, TO WHICH REFERENCE IS HEREBY MADE FOR ANY AND ALL PURPOSES AND THE SAID TRACT OR PARCEL BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO-WIT:

BEGINNING AT THE NORTHEAST CORNER OF THE AFORESAID, REFERRED TO 3.23 ACRE TRACT AND THE NORTHWEST CORNER OF THAT CERTAIN 4.625 ACRE TRACT DESCRIBED IN A DEED FROM CHARLES A. ORSBORNE, ET UX TO JEFFREY ALAN MOFFETT ET UX DATED AUGUST 31, 1984 AND RECORDED IN VOLUME 565 ON PAGE 591 OF THE DEED RECORDS OF ANGELINA COUNTY, TEXAS, A 1/2" ROD FOUND FOR CORNER IN THE SOUTH BOUNDARY LINE OF THAT CERTAIN 30.41 ACRE TRACT DESCRIBED IN A DEED FROM DONALD LUSTER, ET UX TO GLEN N. MCDANIEL, ET UX DATED NOVEMBER 1, 1980 AND RECORDED IN VOLUME 510 ON PAGE 887 OF THE DEED RECORDS OF ANGELINA COUNTY, TEXAS, SAID ROD WITNESSED BY A FENCE CORNER BEARING S 69 DEG 55' W 1.2 FEET;

THENCE S 34 DEG 33' 48" W (CALLED S 34 DEG 33' 56" W) WITH THE EAST (OR SOUTHEAST) BOUNDARY LINE OF THE SAID 3.23 ACRE TRACT AND THE WEST (OR NORTHWEST) BOUNDARY LINE OF THE SAID 4.625 ACRE TRACT, AT 713.53 FEET (CALLED 713.60 FEET) THE SOUTHEAST CORNER OF THE SAID 3.23 ACRE TRACT AND THE SOUTHWEST CORNER OF THE SAID 4.625 ACRE TRACT, A POINT FOR CORNER FOR CORNER IN THE CURVING NORTH (OR NORTHEAST) RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 326 (100 FEET WIDE RIGHT-OF-WAY), SAID POINT WITNESSED BY A POWER POLE BEARING N 29 DEG W 0.4 FEET, A FENCE CORNER BEARING N 34 DEG E 0.7 FEET, AND A CONCRETE RIGHT-OF-WAY MONUMENT BEARING S 57 DEG 05' 47" E 390.71 FEET;

THENCE NORTHWESTERLY WITH A 05 DEG 13' 32" CURVE TO THE RIGHT (CENTRAL ANGLE = 12 DEG 32' 24" RADIUS = 1096.45 FEET WITH LONG CHORD BEARING AND DISTANCE= N 40 DEG 33' 47" W 239.50 FEET (CALLED N 40 DEG 33' 44" W 239.50 FEET)) WITH THE SOUTH (OR SOUTHWEST) BOUNDARY LINE OF THE SAID 3.23 ACRE TRACT AND THE NORTH (OR NORTHEAST) RIGHT-OF-WAY LINE OF THE SAID F.M. HIGHWAY NO. 326, AT 239.97 FEET THE SOUTHWEST CORNER OF THE SAID 3.23 ACRE TRACT AND THE SOUTHEAST CORNER OF THAT

CERTAIN 2.255 ACRE TRACT DESCRIBED IN A DEED FROM BOBBY R. HALL TO AUDREY B. HALL DATED FEBRUARY 25, 1988 AND RECORDED IN VOLUME 714 ON PAGE 891 OF THE REAL PROPERTY RECORDS OF ANGELINA COUNTY, TEXAS, A 1/2" PIPE FOUND FOR CORNER WITNESSED BY A 1/2" ROD (AT A FENCE CORNER) BEARING N 39 DEG 11' 54" E 0.32 FEET AND A CONCRETE RIGHT-OF-WAY MONUMENT BEARING N 25 DEG 34' 10" W 332.59 FEET;

THENCE N 34 DEG 32' 46" E (CALLED N 34 DEG 32' 46" E) WITH THE WEST (OR NORTHWEST) BOUNDARY LINE OF THE SAID 3.23 ACRE TRACT AND THE EAST (OR SOUTHEAST) BOUNDARY LINE OF THE SAID 2.255 ACRE TRACT, AT 493.12 FEET (CALLED 493.12 FEET) THE NORTHWEST CORNER OF THE SAID 3.23 ACRE TRACT AND THE NORTHEAST CORNER OF THE SAID 2.255 ACRE TRACT, A 1/2" ROD FOUND FOR CORNER IN THE SOUTH BOUNDARY LINE OF THE AFORESAID 30.41 ACRE TRACT, SAID ROD WITNESSED BY A FENCE CORNER BEARING S 03 DEG 19' E 1.2 FEET;

THENCE S 89 DEG 53' 40" E (CALLED S 89 DEG 54' 12" E) WITH THE NORTH BOUNDARY LINE OF THE SAID 3.23 ACRE TRACT AND THE SOUTH BOUNDARY LINE OF THE SAID 30.41 ACRE TRACT, AT 280.91 FEET (CALLED 280.97 FEET) THE POINT AND PLACE OF BEGINNING AND CONTAINING 3.23 ACRES OF LAND, MORE OR LESS.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT, AND THERE ARE NO VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS, OR RIGHTS-OF-WAY, EXCEPT AS SHOWN HEREON, AND SAID PROPERTY ABUTS F.M. HIGHWAY NO. 326 AS SHOWN ABOVE.

BASIS OF BEARINGS: THE WEST BOUNDARY LINE OF THE SAID 3.23 ACRE TRACT (DEED CALL - E 493.12 FEET).

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

6. Debtor have failed to maintain current the post-petition payments due under the Note and as of February 5, 2019 are presently in arrears for 3 payments through and including the February 1, 2019 payment.

7. The outstanding indebtedness to Movant is \$43,134.73 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Deed of Trust.

8. In accordance with the terms of the Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Deed of Trust.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

12. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all post-petition payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR CITIGROUP MORTGAGE LOAN TRUST, INC. ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005-HE2 be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2019, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ HEATHER GRAM-CHAVEZ 02/25/2019

HEATHER GRAM-CHAVEZ

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TRUSTEE:

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TYLER, TX 75702

US TRUSTEE:

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DEBTOR'S ATTORNEY:

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PARTIES IN INTEREST:

None

PARTIES REQUESTING NOTICE:

None